Thank you for your comment, Brad Klafehn.

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Comment Submitted:

Comments By Brad Klafehn, Denver, Colorado on 2012 Oil Shale and Tar Sands Programmatic EIS, April 27, 2012

Thank you for the opportunity to comment on the 2012 Oil Shale and Tar Sands Programmatic EIS. My name is Brad Klafehn from Denver, Colorado. I attended the May 4, 2011 Denver, Colorado Scoping Session on this EIS and testified publicly there. I am retired from the City and County of Denver Finance Office, and am the holder of a Master of Public Administration from the University of Colorado, with an emphasis on Policy Analysis. In the 1970's, I was active in the oil shale leasing and regulatory arena as a staff member of the Colorado Open Space Council Mining Workshop. As such, I and others brought suit against the Department of Interior and the oil company lessees over the Programmatic EIS which was then being prepared as being inadequate. I also testified before Congress regarding oil shale leasing and toured the Piceance Basin lease sites numerous times. I was not involved in the 2008 lawsuit which forced preparation of this revision to the Programmatic EIS.

While BLM is moving in the right direction by recommending that the over 2 million acres currently authorized for leasing be reduced, its preference for Alternative 2, making 830,000 acres available for commercial development, is still too aggressive for an industry which has shown little ability to produce oil from shale and when data from the current R&D leases are so scarce. 830,000 acres represents 1,300 square miles of land. This is an obscene amount of public land to be tied up for potential commercial leasing, with all the uncertainties this creates for local governments and land administrators. It makes more sense from a public policy standpoint to adopt Alternative 3, restricting further leasing at this point to the areas surrounding the current six, and possibly nine, R&D tracts, if and when it can be shown that they can be developed profitably and environmentally. Alternative 3 would make available one-twenty-seventh of the land to be made available under Alternative 2. This is a sensible, precautionary alternative to Alternative 2, given that there is so little actual operating experience from the R&D tracts. Adopting Alternative 3 would let further leasing decisions be fully informed by the results of the R&D process, and would free the Bureau Field Offices from having to revise a bevy of land use plans for a commercial industry which may never occur. In the meantime, the industry owns sizeable quantities of private oil shale land which they can develop without federal leasing approvals.

For the last 35 years that I have been observing the industry, the constant drumbeat from potential oil shale producers has been to grab as much land as soon as possible while conjuring visions of an immanently mature industry which would be ready to spring into existence were it not for governmental interference and restriction in the leasing and regulatory areas, given that the environmental impacts of full-scale, commercial oil shale development are said to be acceptable and manageable. As I noted in my Scoping Comments, this is the fairyland version of events. In reality, none of these assertions have come to pass during the last four decades, and in many ways, the current debate rehashes the same issues in the same manner from 35 years ago.

In my opinion, the Bureau has done a better job than previously in providing citations to the relevant literature, but the analysis of that research data is superficial, the document has not incorporated much of this data into the discussion, and it still fails to present essential, critical real-life data. For example, in Appendix A, BLM seeks to describe the current research tracts, their technology, and impacts. But an examination shows that the <u>only</u> information presented comes from the 2006-2007 EAs and from operator-submitted Operation Plans. NO operational data is presented! Absurdly, the EIS contains statements like this one:

> "The next phase of the research was scheduled to occur in the spring of 2006 and was to involve a 30-day continuous operation of the retort using the Mahogany Ridge shale that is still at the research site. Over this period, additional data will be collected that will be essential for optimizing operating parameters for the retort, establishing reaction kinetics and thermodynamics to optimize yields, and more precisely evaluating the environmental impacts of the operation, including disposal of spent shale. (p. A-56, lines 8-13.)

One has to wonder when this statement was actually written. "The next phase of research was scheduled to occur" 6 years ago? There haven't been any developments since then that BLM can report to inform decision-making and the public? If this were a school paper, one would be tempted to give it an 'incomplete' and send it back for further work. If there have been no developments and no data generated in the last six years, then this speaks volumes about the unreadiness of operators to proceed in developing the resource, and thus, their lack of need for additional public land. If there have been developments since then, failure to present that further information is an indication of the failure of the EIS to present a reasonably accurate description of the known data and issues. In either case, the EIS's justification for leasing 830,000 additional acres fails.

However, the EIS indicates that this failure is a feature not a bug. Specifically, page J-6, in the analysis of Scoping Comments, states that the comment that "deferment of decisions [should be made] until RD&D results are available" is outside the scope of the PEIS. Surely, knowledge of specific impacts is exactly within the scope of the EIS and essential to a judgment on the desirability of proceeding with further leasing. By defining this issue away, BLM shows the bankruptcy of this process.

Likewise, at the scoping meeting, I recommended the formation of a technical advisory committee, such as the one that BLM had in the 1970's, to keep the public and local governments involved and aware of technical developments. Speaking from personal experience, this was very useful in the past for me, as a member of the public, and others. However, here again, the Bureau has decided that this is 'outside the scope' of the EIS. This is ridiculous. BLM could easily commit to creating this group as part of the mitigation and stakeholder involvement processes, and it should do so as part of the final EIS.

In general, BLM has avoided addressing most of the cumulative impacts of its leasing decision by saying they are outside the scope of the analysis. However, if they are not addressed now as potentially setting an upper limit for development, when would they ever be addressed? What is a programmatic EIS for, if not for addressing programmatic impacts?

In what follows, I have specific comments on the impact analysis portion of the document.

– P. 4-4, line 45: The water uses listed – dust suppression and 'moisturizing' spent shale (does the spent shale have dry skin?) are obviously consumptive uses, not 'nonconsumptive,' as the water thus used will be lost to evaporation. This mistake repeats itself on p. 4-9, lines 32-35.

– P. 4-6, line 436ff: Does syncrude from oil shale have similar characteristics with the dilbit produced from oil sands in Canada, or Utah? What are the differences, as concerning viscosity and corrosivity? The Kalamazoo River pipeline leak seems to have been caused by corrosion due to dilbit. Will this be an issue for Colorado and Utah oil shale or tar sands transportation?

– P. 4-9, line 32-35: How much water is expected to be dewatered from underground mining

operations? What are the exact water quality considerations and standards which must be met in order to apply this water in these ways?

– P. 4-12, lines 33-40: There is no analysis of pipelines required other than 'feeder' pipelines. If an attempt is not made to quantify these cumulative impacts now, when will they be quantified?

– P. 4-25, line 38: Pipeline breaks of any kind would affect water and soils – not just breaks due to 'flood events.' This is particularly true if the syncrude or dilbit is corrosive, a subject that the EIS does not address.

– P. 4-27, line 43: Toxic metals are subject to be being leached, as well. The text should be modified to reflect this.

– PP. 4-27 through 4-28, Mitigation Measures: This section should include a discussion of the BLM's and the States' requirements for reclamation performance bonds as one of the main mitigation measures for soil and geologic resources.

– P. 4-29: The discussion of the protection of paleontological resources totally ignores the role of the SHPOs – the State Historic Preservation Officers.

– P. 4-34, lines 1-2: Merely saying that "water may be obtained from major streams, groundwater, or reservoirs" is a tautology with no definable content. This programmatic EIS should include a programmatic analysis of the possible sources of water for commercial oil shale operations on the 830,000 acres it proposes to make available for leasing and development. Is water availability a limiting factor for development on this scale or not? The EIS cannot just punt this question into the future, as it tries to do by again claiming that the analysis is 'outside the scope' of the EIS (P. J-20, lines 26-38).

– P. 4-38, line 2: The EIS should acknowledge that injection wells not only have the potential to degrade water quality, but also to cause earthquakes, as stated by the USGS at a panel entitled "Are Seismicity Rate Changes in the Midcontinent Natural or Manmade?" presented to the Seismological Society of America's 2012 Annual Meeting.

– P. A-61: This table needs to explain why 'simulated in situ retorts' are described, when actual data stemming from in situ retorting are available. For example, I have personally seen data from Anvil Points which indicated that in situ retort water contained arsenic in excess of 1,000 times the safe drinking water standard. This was obtained in our 1970's lawsuit against DOI, but the data was placed under seal by the Court, and thus unavailable to those who were not counsel of record. In my scoping comments, I asked BLM to dig out that data and present it as part of this EIS, as it obviously has great significance for this analysis. This has not been done, calling into question whether this document is truly a scientific study or merely a political statement. (A schedule for the EIS handed out at the scoping meeting in Denver showed a final decision on the EIS was timed to coincide with a possible exit from power by the Obama Administration in January 2013. This information is nowhere to be found in this Draft EIS. This decision on future leasing is too important for its schedule to be dictated by re-election politics. The changes required to be made to this EIS may well push the schedule out past what appears to be an arbitrary deadline selected for political purposes.)

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In sum, this is a supposed programmatic EIS which resolutely refuses to conduct its analysis at a programmatic scale. BLM needs to re-examine its decisions as to which subjects are 'outside the scope' of the programmatic EIS and include them in the final EIS.

BLM also needs to identify and analyze real data from oil shale operations from all available sources, and incorporate them into its analysis.

Lacking this, this EIS will go down in the history books as so many have before it – as an effort to justify politically-motivated decisions without reaching the essential scientific and policy issues which must be addressed before undertaking a federal action of this magnitude.